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EXAMINER

DEXTER, CLARK F

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3724

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/587,341
Filing Date: July 25, 2006
Appellant(s): WESTERHOF ET AL.

Michael Marcin
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 9, 2009 appealing from the Office action mailed September 25, 2008.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-6 stand finally rejected and are being appealed.

Claims 7-8 stand objected to.

Claim 9 has been canceled.

(4) Status of Amendments After Final

One amendment was filed after final rejection (on November 25, 2008) and was entered per the advisory action mailed on December 8, 2008.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being

maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

1,010,704	Story	12-1911
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(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Story, pn 1,010,704.

Story discloses a razor with every structural limitation of the claimed invention including guiding members (e.g., the upper portion of 14 and 17 as viewed in Fig. 3) and a blade (e.g., 15), a grip portion (e.g., 26) pivotal about a pivot axis (e.g., 22 as viewed in Fig. 3), wherein the location of the pivot axis is adjustable to different locations on the blade assembly and can be fixed in two or more locations or positions (e.g., by moving threaded member 13 with respect to 20 through varying degrees of tightness such as by rotating 13 with respect to 20 180 degrees in either direction; or by moving/adjusting the handle to adjust the pivot axis to different locations as shown in Fig. 2), and wherein the blade assembly can hinge around a pin (e.g., 13; or 27), which pin is attached to the

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grip portion (e.g., via 20, 22, 23; or directly), wherein the blade assembly is provided with means for engaging the pin (e.g., either the bottom surface of 12, or 21; or 23, 25), and wherein the means for engaging the pin comprises clamp means (e.g., 23, 25).

In the alternative, if it is argued that there is no disclosure of such a function, it would have been obvious to one having ordinary skill in the art to make the invention, particularly the pertinent features thereof from a pliable material that would allow such action for various well known benefits including the availability of such material, the reduced cost of such material, and the likely reduced weight of such material.

It is noted that regarding independent claim 1, it is believed that Story anticipates this claim and thus it is not necessary to rely on the alternative grounds of rejection for claim 1.

(10) Response to Argument

First, it is respectfully noted that appellant has provided arguments only for the prior art rejection of claim 1. Further, appellant concludes in the sentence bridging pages 4-5 of the Brief that

“Because claims 2-6 depend from, and therefore include all the limitations of claim 1, it is respectfully submitted that these claims are also allowable for at least the same reasons given above with respect to claim 1.”

Appellant has provided no additional arguments for the dependent claims. Thus, it is respectfully submitted that dependent claims 2-6 are considered to stand or fall with independent claim 1 and thus will not be further addressed.

Second, it is respectfully submitted that claim 1 clearly teaches and/or suggests the limitations of claim 1 in at least the following manner.

Claim 1 reads as follows:

1. A safety razor apparatus having a blade assembly comprising
two guiding members (e.g., the upper portion of 14 and 17 as viewed in Fig. 3)
each having a surface for abutting against the skin, and
one or more blades (e.g., 15) **located between said two guiding members**
wherein a cutting edge of each blade and said surfaces are positioned
substantially in one plane (e.g., as shown in Fig. 3), **and**
the apparatus has a grip portion (e.g., 26) **being pivotal relative to said**
blade assembly about a pivot axis (e.g., the pivot axis that extends into and out of the page as viewed in Fig. 1 about which handle 26 is shown as being pivotable; this pivot axis extends vertically as viewed in Fig. 2 as does the blade edge of blade 15)
wherein the pivot axis is positioned parallel to said cutting edge of each
blade (e.g., the pivot axis shown in Fig. 1 is parallel to the cutting edge of the blade 15 which edge also extends in a direction into and out of the page; both extend vertically in Fig. 2) **the pivot axis being adjustable to different locations on the blade assembly** (e.g., the pivot axis is clearly adjustable including angularly to different locations on the blade assembly (which blade assembly includes feature 22 as well as blade 15 and guiding members 14, 17) as shown in Fig. 2 – NOTE, there is no requirement in the claim that the pivot axis remain parallel to the cutting edge during or after any adjustment of the pivot axis).

In the third paragraph on page 4 of the Brief, appellant argues:

"The Examiner specifically states that the above limitation of claim 1 is taught by Story "by moving threaded member 13 with respect to 20 through varying degrees of tightness such as by rotating 13 with respect to 20 180 degrees in either direction; or by moving/adjusting the handle to adjust the pivot axis to different locations shown in Fig. 2." (See 09/25/08 Office Action p. 3). This is incorrect. Claim 1 specifically recites, "the pivot axis being adjustable to different locations on the blade assembly."

The Examiner respectfully disagrees with appellant's position that the Examiner's position is incorrect, particularly with regards to the second of two examples provided in the prior art rejection by the Examiner:

"or by moving/adjusting the handle to adjust the pivot axis to different locations shown in Fig. 2."

Clearly, Story meets the claim when applied in such a manner.

In the fourth paragraph on page 4 of the Brief, appellant argues that:

Threaded member 13 represents a screw-threaded shank which is rigidly attached to the blade rest 12. (See Story, col. 1, 11.51-52). A clamp 20 bears on the outer side of the guard plate and has a central screw-threaded socket 21 engaged with the threaded member 13, so that when the clamp 20 is rotated on the threaded member 13 it acts as a nut. (See Story, col. 2, 11. 100-105). Threaded member 13 and clamp 20 in Story merely provide a method for connecting the blade with the handle. The Examiner equates rotating the threaded member 13 180 degrees to "the pivot axis being adjustable to different locations on the blade assembly." However, mere rotation of the threaded member does not adjust a pivot axis "to different locations on the blade assembly." In addition, mere rotation of the threaded member does not generate "different locations on the blade assembly," as recited in claim 1.

This argument is directed to the Examiner's first of two examples in the prior art rejection, specifically:

"by moving threaded member 13 with respect to 20 through varying degrees of tightness such as by rotating 13 with respect to 20 180 degrees in either direction."

The Examiner respectfully concedes that this application of the prior art to claim 1 is not applicable because the pivot axis of this example is not parallel to the cutting edge of the blade. Thus, this example in the prior art rejection can be disregarded.

However, the Examiner respectfully maintains that the Story anticipates claim 1 using the second example:

"or by moving/adjusting the handle to adjust the pivot axis to different locations as shown in Fig. 2."

In the paragraph bridging pages 4-5 of the Brief, appellant argues that:

The handle, from Story, is maintained at a fixed point on the blade. For example, in figure 2, the grip portion attaches to the blade portion at point 13. Story cannot adjust the point at which the grip portion attaches to the blade portion. Therefore, Story cannot be "adjustable to different locations on the blade assembly," as recited in claim 1.

The Examiner respectfully disagrees with appellant's analysis and submits that appellant is reading the prior art too narrowly. That is, the prior art has not been applied in the manner argued by appellant. Appellant has assigned features including 20 and 22 as being part of the grip portion. However, it is clear from the prior art rejection that this is not how the prior art has been applied in the prior art rejection. It is clear from the prior art rejection and upon review of the limitations of claim 1 as provided at the

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beginning of this argument section, that Story clearly meets all of the limitations of claim 1. Specifically regarding appellant's argument, handle portion 26 is clearly adjustable along feature 22 as shown in Figure 2 such that the pivot axis is adjustable in upward and downward directions, wherein such adjustments change the location as well as the angle of the pivot axis. As stated above, it is emphasized that claim 1 only requires that the pivot axis be adjustable to different locations on the blade assembly. This is clearly shown in Figure 2 as described above. It is further emphasized that there is no requirement in claim 1 that the pivot axis remain parallel to the cutting edge during or after any adjustment of the pivot axis.

Therefore, for at least the above reasons, it is respectfully submitted that the prior art rejection must be maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

**/Clark F. Dexter/
Primary Examiner, Art Unit 3724**

Conferees:

/Boyer D. Ashley/

Supervisory Patent Examiner, Art Unit 3724

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/Joseph J. Hail, III/

Supervisory Patent Examiner, Art Unit 3723